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FM SECSTATE WASHDC

TO USMISSION IAEA VIENNA PRIORITY

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E.O. 11652: N/A

TAGS: IAEA TECH

SUBJ: DRAFT US/IAEA SAFEGUARDS AGREEMENT AND PROTOCOL

REF: IAEA VIENNA 9274 AND STATE 235658

1. REVIEW OF DRAFT PROTOCOL HAS LED TO FOLLOWING
PROPOSED CHANGES IN BOTH PROTOCOL AND AGREEMENT:

A. DRAFT AGREEMENT

1. REVERSE SEQUENCE OF ARTICLES 12 AND 13
TO PARALLEL PARAGRAPHS IN INFCIRC/153. MAKE
CORRESPONDING CHANGES TO REFERENCES IN ARTICLES
35 AND 36.

2. COMBINE ALL THE ESSENTIAL PROVISIONS OF
ARTICLE 12, P-ARTICLE 4, AND PART OF ARTICLE 14
INTO NEW ARTICLE 12, AS FOLLOWS:

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ZARTICLE 12

THE UNITED STATES SHALL HAVE THE RIGHT TO TRANSFER NUCLEAR MATERIAL SUBJECT TO SAFEGUARDS UNDER THIS AGREEMENT TO A DESTINATION OTHER THAN THOSE FACILITIES IDENTIFIED BY THE AGENCY, PURSUANT TO ARTICLE 2.B. AND 39.B. (I) AND (II). THE UNITED STATES SHALL NOTIFY THE AGENCY OF SUCH TRANSFERS IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF PART II. IN SUCH CASES, THE AGENCY SHALL TERMINATE THE APPLICATION OF SAFEGUARDS TO SUCH MATERIAL WHEN IT IS TRANSFERRED OUT OF THE FACILITY IN WHICH IT IS BEING SAFEGUARDED. IF SUCH MATERIAL IS BEING TRANSFERRED TO AN ACTIVITY WITH DIRECT NATIONAL SECURITY SIGNIFICANCE TO THE UNITED STATES, THE UNITED STATES SHALL ASSURE THE AGENCY THAT THE INTENDED USE OF THE NUCLEAR MATERIAL WILL NOT BE IN CONFLICT WITH AN UNDERTAKING THE UNITED STATES MAY HAVE GIVEN AND IN RESPECT OF WHICH AGENCY SAFEGUARDS APPLY, THAT THE MATERIAL WILL BE USED ONLY IN A PEACEFUL NUCLEAR ACTIVITY. THE AGENCY SHALL MAINTAIN RECORDS INDICATING SUCH TRANSFERS AND, WHERE APPLICABLE, THE REAPPLICATION OF SAFEGUARDS TO THE TRANSFERRED NUCLEAR MATERIAL."

3. COMBINE ALL ESSENTIAL PROVISIONS OF ARTICLE 34B, P-ARTICLE 3, AND PART OF ARTICLE 14 INTO REVISED ARTICLE 34B, AS FOLLOWS:

REVISED ARTICLE 34.B.

FACILITIES SHALL BE ADDED TO OR REMOVED FROM THE LIST, AS THE CASE MAY BE, IN ACCORDANCE WITH, AND AT TIMES SPECIFIED IN, NOTIFICATION BY THE UNITED STATES, PURSUANT TO ARTICLE I.B. IN THE CASE OF REMOVAL OF A FACILITY THEN CURRENTLY IDENTIFIED BY THE AGENCY PURSUANT TO ARTICLES 2.B AND 39.B. (I) AND (II), SAFEGUARDS ON THE NUCLEAR MATERIAL CONTAINED IN THE FACILITY SHALL TERMINATE IN ACCORDANCE WITH, AND AT THE TIME SPECIFIED IN, NOTIFICATION BY THE UNITED STATES. WITH RESPECT TO SUCH MATERIAL, THE UNITED STATES SHALL ASSURE THE AGENCY THAT THE INTENDED USE OF THE NUCLEAR MATERIAL WILL NOT BE IN CONFLICT WITH AN LIMITED OFFICIAL USE

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UNDERTAKING THE UNITED STATES MAY HAVE GIVEN AND IN RESPECT OF WHICH AGENCY SAFEGUARDS APPLY, THAT THE MATERIAL WILL BE USED ONLY IN A PEACEFUL NUCLEAR ACTIVITY."

4. DELETE ARTICLE 14, AND RENUMBER ARTICLES ACCORDINGLY.
B. DRAFT PROTOCOL

1. DELETE P-ARTICLES 3 AND 4, AND RENUMBER P-ARTICLES

ACCORDINGLY. MAKE APPROPRIATE CHANGES TO REFERENCES IN

P-ARTICLE 1 AND P-ARTICLE 5, AS FOLLOWS:

A. P-ART. 1-DELETE PHRASE "AND MAINTENANCE", AND ALL
OR PARAGRAPH (II), RENUMBERING (III) AND (IV) ACCORDINGLY.

B. P-ART. 5.A - DELETE PHRASE "AND ARTICLE 3 OF THIS
PROTOCOL."

2. BENEFITS OF FOREGOING PROPOSED CHANGES ARE (A) ELIM-
INATION OF A POTENTIALLY CONFUSING REDUNDANCY IN AGREEMENT
AND PROTOCOL OF TWO PRINCIPLES, I.E., ADDITION OR REMOVAL OF
FACILITIES FROM ELIGIBLE LIST AND REMOVAL OF MATERIAL
FROM SAFEGUARDS, AND (B) CONSOLIDATION IN PARTS I AND II
OF AGREEMENT OF THOSE PROVISIONS DEALING WITH SAFEGUARDED
FACILITIES, LEAVING PROTOCOL TO COVER, PRINCIPALLY, UN-
SAFEGUARDED FACILITIES AND RELATED TRANSITIONAL FACILITY
ATTACHMENTS (TFA)

3. OTHER COMMENTS ON DRAFT PROTOCOL AS FOLLOWS:

A. P-ARTICLE I - WOULD PREFER USE PHRASE "WHICH HAS
SAME FORCE AND EFFECT AS THE AGREEMENT" IN LIEU
OF "WHICH IS AN INTEGRAL PART OF THE AGREEMENT" TO
AVOID ANY CONFUSION AS TO WHICH DOCUMENT IS BEING
REFERRED TO WHEN PROVISIONS OF "THE AGREEMENT" ARE
REFERRED TO. CHANGE REF TO "ARTICLE ER" TO ARTICLE 34-A."

B. P-ARTICLE 1 AND ARTICLE 2 - ADD "TO THE UNITED
STATES" AFTER "NATIONAL SECURITY SIGNIFICANCE."

C. P-ART. 2 - REPLACE "SIMULTANEOUSLY HEREWITH" WITH
"ON THE DATE OF ENTRY INTO FORCE OF THIS PROTOCOL."
REPLACE "ANNEXED HERETO" WITH "ANNEXED TO THIS
PROTOCOL". ADD "WITHIN THE UNITED STATES" BETWEEN
"FACILITIES" AND "NOT ASSOCIATED."

D. P-ARTICLE 5A - CHANGE PHRASE "THIS AGREEMENT" TO
"THE AGREEMENT" HERE AND ELSEWHERE IT MAY APPEAR
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IN PROTOCOL. CHANGE "ARTICLE 1B" TO "ARTICLES 1B
AND 34B," AND "ARTICLE 2B" TO ARTICLES 2B AND
39B(1) OR (II)."

E. P-ART. 5.B. - CHANGE "ARTICLE 2?" TO "ARTICLES 2B
AND 39.B (1) AND (II)," AND "ARTICLE 39.(III)"
TO "ARTICLE 39.B(III)." ARTICLE 5.B. AND C. -
CHANGE "FOREGOING SUB-PARAGRAPH" TO FOREGOING
PARAGRAPH", MAKING PLURAL IN CASE OF C.

F. ARTICLE 6.B - CHANGE REFERENCE TO "ARTICLE 8"
TO "ARTICLE 9" AND "ARTICLES 9 AND 10" TO "ARTICLES
10 AND 11." ALSO CHANGE "ARTICLES 11 THROUGH 21" TO
"ARTICLES 12 THROUGH 21." NOT CERTAIN WHY WORD
"ASPECTS" USED, AND SUGGEST REPLACING WITH
"PROVISIONS" IN TWO PLACES WHERE WORD IS USED. ALSO
SUGGEST REPLACING PHRASE "CORRESPOND TO" WITH

"SATISFY", AND REPLACING PHRASE "WHICH ADDRESS"
WITH "RELATING TO."

4. PER VIENNA 9691, UNDERSTAND MISSION PLANNING SUGGEST
POSSIBLE ADDITIONAL LANGUAGE FOR PROTOCOL AS RESULT DIS-
CUSSIONS WITH FRG REPS. KISSINGER

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